

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

MEYNARD DESIGNS, INC. AND EARTH,
INC.

Plaintiffs and
Counterclaim-Defendants,

v.

EARTH PRODUCTS INC.

Defendant and
Counterclaim-Plaintiff.

EARTH PRODUCTS INC.

Third-Party Plaintiff and
Counterclaim-Defendant,

v.

PLANET, INC.

Third-Party Defendant and
Counterclaim-Plaintiff.

CIVIL ACTION NO. 05 cv 11781 NMG

**MEMORANDUM OF LAW IN SUPPORT OF UNOPPOSED MOTION BY
DEFENDANT AND COUNTERCLAIM-PLAINTIFF EARTH PRODUCTS INC. FOR
THE ISSUANCE OF A SECOND LETTER OF REQUEST**

Defendant and counterclaim-plaintiff Earth Products Inc. respectfully submits this memorandum of law in support of its unopposed motion for the issuance of a second letter of request to obtain testimony and documents from a witness in the Cayman Islands related to the above-captioned matter. A proposed order and letter of request are attached as Exhibits 1 and 2 to the Affidavit of Derrick W. Toddy, sworn to on July 2, 2007, in support of this motion (the "Toddy Affidavit").

The plaintiffs in this action allege that Earth Products Inc. is infringing trademarks owned by plaintiffs relating to the mark "EARTH." Earth Products Inc. is defending on multiple bases, including on the basis that the alleged marks were or have been abandoned, and are therefore invalid and/or unenforceable.

The person named below has information of critical importance to the actions before the Court. Earth Products Inc. respectfully requests that the Court issue a letter of request to obtain this individual's testimony and documents. The Court has the power to transmit such a letter of request to the appropriate authority in the Caymans pursuant to 28 U.S.C. § 1781 and the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, opened for signature Mar. 18, 1970, 23 U.S.T. 2555, 847 U.N.T.S. 231.

Earth Products Inc. therefore respectfully request that the Court (a) sign and have the Clerk affix the seal of the Court to the letter of request seeking testimony and documents from E. J. Christian, and (b) forward the original signed, sealed letter of request to the undersigned for delivery by local counsel in the Cayman Islands to His Excellency the Governor of the Cayman Islands, Government Administration Building, Elgin Avenue, George Town, Grand Cayman, Cayman Islands BWI3.

Dated: July 2, 2007

By: /s/ Derrick W. Toddy
J. Christopher Carraway (*pro hac vice*)
Email: chris.carraway@klarquist.com
Cindy L. Caditz (*pro hac vice*)
Email: cindy.caditz@klarquist.com
Scott E. Davis (*pro hac vice*)
Email: scott.davis@klarquist.com
Derrick W. Toddy (*pro hac vice*)
Email: derrick.toddy@klarquist.com
KLARQUIST SPARKMAN, LLP
121 S.W. Salmon Street, Suite 1600
Portland, Oregon 97204
Phone: 503-595-5300
Fax: 503-595-5301

Steven M. Bauer, BBO# 542531

sbauer@proskauer.com

Gina Lombardo, BBO # 664839

glombardo@proskauer.com

PROSKAUER ROSE LLP

One International Place

Boston, Massachusetts 02110

Phone: 617-646-8000

Fax: 617-646-8646

Attorneys for Earth Products Inc.